1950. K File No. O: Merged states 50

Legal Dept-

A – BRANCH

Subject:— Opinions under the merged states (Laws) Act- 1950

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C O N T E N T S.

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Legal Department.

No notification abolishing customs duties leviable under the Sirohi State Customs Act, 1944, is necessary. under paragraph 4 of the States' Merger (Bombay) order, 1950, all laws inforce in the Sirohi State immediately before the 25th January 1950 including the Sirohi State Customs Act, 1944 have ceased to be in force as from that date "Laws" for the purposes of the Order, includes any notification, order, schedule, rule or by-law made unde r the Act. The customs duties leviable under the said Act have therefore ceased to be in force with effect from the 25th January 1950.

J.R.Dhurandar.
25-4

Additional Secretary to Government.

U.R. to P.& S.D., No. 5661 , dated the 26th April 1950.

S.C. 7/6

Legal Department.

The Bill referred to in Secretary, D.D.'s note at p. 8 ante has been passed into an Act as Bombay Act IV of 1950. Necessary amendments have been made by the Act in the Bombay Agricultural Debtors Relief Act, 1947 in its application to the States in question. The attention of the District Judges may be drawn to the Bombay Act IV of 1950.

J.R. Dhurandar.
15-4
Additional Secretary to Government.

U.R. to D.D', No. 5175 dated the 17th April 1950.

S. C. 8/6

Local Department.

Both the proposals of the L.S.G. and P.W.D. to revive the rules, bye-laws and orders -

(i) made under the Baroda Village Panchayats Act; and

(ii) made under the Baroda Local Boards Act,

by an order under para 13 of the Baroda State (Application of laws) order, 1949, are not now legally feasible as the power of making such an order no longer continues. By the Bombay Merged States (Laws) Act, 1950 (Bom. IV of 1950) all the laws specified in the first Schedule to the Act have been extended to, and brought into force, in the merged States and under sub-section (3) of section 3 of the Act, rules, bye-laws, orders made or issued under the laws so extended are to be deemed to extend to, and be in force in the territories of the merged States. It is clear that general rules made by the Bombay Government under the Bombay Village Panchayats Act or the Bombay Local Boards Act would automatically be in force in the territories of the Merged State of Baroda. The only question that remains to be considered is about the rules, bye-laws, etc., to be made by the individual Village Panchayat or the District Local Board. The Constitution of the district local boards established under the Baroda Law has undergone a change on account of the transfer of areas from one district to another district, and practically all local boards in the Baroda area have been reconstituted for the new districts under the Bombay Local Boards Act, 1923. The proper course for the local boards, therefore, was to frame afresh the rules, regulations etc., under the Bombay Local Boards Act, 1923. A period of nine months has elapsed since the complete merger of the Baroda State with the State of Bombay and during this time the district local boards and the Village Panchayats could have taken steps to frame new rules under the respective Bombay Act It is, therefore, suggested that the district local boards and the village Panchayats may, therefore, be asked to take

immediate steps to frame afresh such rules and regulations as may be necessary under the respective Bombay Acts.

J.R.dhurandar.
19-5

Additional Secretary to Government.

U.R. in L.S.G. No.

U.R. to L.S.G. & P. H.D. No. 6849 dated 19 theMay 1950.

S.C. 7/6

Office of the R.L.A.

States Merger (Governor's Provinces) Order, 1949, vesting of liability arising out of working of Kolhapur State Railway.

Under para. 5(1) of the States Merger (Governor's Provinces) Order, 1949, all property, wherever situate, which immediately before 1st August 1949, was vested in the Dominion Government for purposes of the governance of a merged State is from that day vested in the Government of the absorbing Province, unless the purposes for which the property was held immediately before that day are central purposes. Para. 7 provides for the vesting of liabilities. Under that para. all liabilities in respect of financial obligations of the Dominion Government arising out of the governance of a merged State shall be liabilites of the absorbing Province unless the obligation is relatable to central purposes. Under item 22 in the Union List in the Seventh Schedule to the Constitution of India "Railway" is a subject allotted to the Union. Consequently the property in the Kolhapur State Railway would now be deemed to be vesting in the Union Government and liabilities arising out of that property will be the liabilities of that Government. The view expressed by the Secretary, P.W.D. in his note at pages 24-25 ante is correct.

P .M.Lad
19-5
Remembrancer of Legal Affairs.

U.K. to P. & S.D. No. 6908 , dated the 22nd May 1950.

S.C. 8/6

Office of the R.L.A

The trust deed in question does not cease to be operative merely because the post of the Accountant General, Baroda is now ~~abexit~~ abolished. Inthe absence of the Account nt General Baroda any other person can be appointed as "trustee" by the Government under clause 1(e) of the trust deed. Under the said clause the Government may make a fresh appointment of the trustee. It is, ~~hxm~~ however, suggested that the appointment may be made by name.

P.M.Lad
23-5

Remembrancer of Legal Affairs.

U.R. to D.D' No. 7038 , dated the 24th May 1950.

S, C, 8/6

Office of the R.L.A.

States Merger (Governor's Provinces) Order 1949, paragraphs 2(c) and 5
Government of India Act, 1935. Schedule VII List I, entry 7.

The question for the Remembrancer of Legal Affairs consideration is whether the Government of Bombay will be entitled to any compensation from the Government of India inrespect of the telephone systems in the merged States which shall be ~~had~~ handed over to the Posts and Telegraphs Department.

2. Under paragraphs 5 of the State Merger (Governor's Provinces) order, 1949, all property wherever situate, which, immediately before the appointed day, is vested in the Dominion Government for the purposes of the Governance of a merged State, shall, as from that day, vest in the Government of the absorbing Province unless the purposes for which the property is held immediately before that date are Central purposes. "Central purposes" are defined in paragraph 2(c) as meaning the purposes of Government relatable to any of the matters mentioned in the Federal Legislative List, "Telephones" have were mentioned in entry 7 of the Federal Legislative List in the 7th Schedule to the Government of India Act, 1935. That being so, the purposes for which the telephone systems in the merged states were held will be considered as Central purposes. The Government of Bombay will not, therefore, be entitled to any compensation from the Government of India for holding over the telephone systems in the merged States to the Posts and Telegraphs Department.

P.M.Lad
18-5

Remembrancer of Legal Affairs.

U.R. to P.D.No. 6847 , dated the 19th May 1950.

S,C. 3/6

Legal Department.

All Kolhapur Vathukums are not in force at present; but from the minutes at page 13 ante it appears that some vahhukums of the Kolhapur State mostly xx relating to watans, Inams and Saranjams are still inoperation in the former area of the merged State of Kolhapur for the reason that the Bombay Hereditery Offices Act, 1874, has not been so far extended to the Kolhapur State. The question of extending the Bombay Hereditory Offices Act, 1874, to the said areas appears to be under the consideration of the Government. From the minutes at page 13 ante it appears that Mr. Alurkar has been appointed by the Government to hold necessary inquiries into the various watans, Inams and Saranjams and report to the Government about his conclusions. Pending submission of that report it would not be possible to repeal the Vathukums.

2. In the circumstances, the Revenue Department. is requested to let this Department know whether Mr. Alurkar has submitted his report to the Government and if so the decision taken by the Government thereon.

J.R.Dhurandar.
6-8

Additional Secretary to Government

U.R. to R.D., No. 11223 , dated the 8th August 1950.

S.C. 8/6

Office of the R.L.A.

The District Judge, Banaskantha, pointed out to the Registrar, Bombay High Court, that a new Civil Court of Civil Judge (junior Division) at Abu Road has been established for the new taluka of Abu Road (which formerly formed part of the Sirohi State) and enquired what is to be done with the work pending in the old State Courts. The Deputy Registrar informed the District Judge that Government is being moved to issue orders providing for the transfer of pending matters to the proper courts in this State. The Home Department has requested the R.L.A. to advise whether action suggested by the High Court can be taken by the issue of an order under the Extra-Provincial Jurisdiction Act, 1947 andif so, to furnish the necessary draft notification.

The Sirohi (Administration) order, 1948, was issued by the Central Government on the 4th January 1949. Paragraph 3 ofthe said order provided that the Government of Bombay shall administer Sirohi on behalf of the Central Government. Under paragraph 4 of the said Order the Provincial Government was empowered to appoint special judges, Magistrates and other officers as may be necessary for the administration of the Sirohi State and to determine their jurisdiction ,powers duties and functions. The said paragraph further provided that all judges, Magistrates and other officers, who immediately before the commencement of that order were exercising lawful functions of the Sirohi State shall until other provision is made by the Government of Bombay, continue to exercise their respective powers and jurisdiction and perform their respective duties and functions in the same manner and to the same extent as they were doing before the commencement of that order. Paragraph 5 of the said Order continued in force all laws in force in Sirohi State until repealed or amended by competent authority. It will thus appear that all the Courts includ

Courts including the judges and Magistrates of such courts continued to function and do their their respective duties and xcontinued to exist and continued to exercise their respective powers and functions in the State area as if they were Court and judges and Magistrates established and appointed by the Bombay Government and no question of transfer of pending cases arose then.

This position continued till 25th January 1950 i. for nearly a year on which date the States Merger (Bombay Order, 1950, was passed under which the area specified in the Order (which then formed part of the Sirohi State) formed part of the Province of Bombay. And under paragraph 4 of the Order all laws inforce in the district of Banaskantha immediately before the 25th January 1950 have been extended and brought into force in the merged area. A proviso is however, added to that paragraph which provides that anything done or any action taken under the laws in force in the merged area before the 25th January 1950 shall be deemed to have been done or taken under the corresponding law extended to and brought into force in that area as from that date. But the whole of the area of Sirohi State formed part of the Province of Bombay it wouldhave been necessary to consider the legal complications only in respect ofcases pending in the Sirohi State High Court. But as the preamble of the States' merger (Bombay) Order, 1950, would show, the said Order provides for the administration of a part of theSirohi State as if it formed part of the adjoining Governor's Province of Bombay. This division of the area of Sirohi State into the province Bombay and the State of Rajasthan has created legal and administrative problems. It is probable that part of the local area or which had been under the original or appellate civil or criminal jurisdiction of a civil or criminal court might have been transferred to the Rajasthan State; similarly, property or personswho may have been involved

in Civil or criminal proceedings may not be entirely within the area incorporated in the State of Bombay. In the result a case or proceeding pending in any civil or criminal court on the 25th January 1950 in respect of property now situate in the Rajasthan State or in respec of offence partly committed inthe area now transferred to the Rajasthan State cannot now legally be continued and disposed of by a civil or criminal court inthe State of Bombay. In the States Merger (Bombay) Order, 1950, there is no provision on the lines of paragraph 8 of the India and Hyderabad (exchange of Enclaves)order, 1950, for removing thedifficulties ~~agx~~ arising in connection with the absorption of the enclaves in the Provinces. It is not, therefore, possible to issue an order on thelines of the Order issued in respect of Hyderabad enclaves under P.& S.D. Notification No. 2755/46-F, dated 3rd April 1950, nor is it feasible to hold that under the proviso to paragraph 4 of the States Merger (Bombay) Order, 1950, the respective courts in the State of Bombay have got jurisdiction to try and dispose of cases pending with them in view of what is stated above. The best course, under the circumstances, is to provide for the continuance and disposal of civil and criminal proceedings ~~x~~ by an Act of a competent legislature. As the subject matter involved in the legislation would relate to area, persons or property divided between the Bombay State and the Rajasthan State, it would not be competent to the State Government to make an enactment in respect of the area, persons or property beyond its jurisdiction. Such an enactment should preferably be made by the Parliament under Article 248 of the Constitution.

/The question may, threrfore, be referred to the Ministry of States for necessary action.

P.M.Lad

Remembrancer of Legal Affairs

Legal Department.

The Royal Family Trust Fund Act will have to be amended. The Administrative Department should decide on what ~~xx~~ lines, it should be amended.

J.R.Dhurandar,
20-9
Additiona l Secretary to Governmen

U.R. to F.D. No. 13380 , dated the 20th September 1950.

S.C. 8/6

Office of the R.L.A.

Liability for payment of contribution to the Indian Council of Agricultural Research States Merger (Governor's Provinces) Order, 1949 - para 7 Constitution - VII Schedule Item 65(b)

Under para. 5(1) g of the States Merger (Governors' Provinces) order, 1949, all property, wherever situate, which immediately before 1st August 1949, was vested in the Dominion Government for purposes of the governance of a merged State is from that day vested in the Government of the absorbing Province, unless the purposes for which the property was held immediately before that day are exclusively Central purposes. Para. 7 provides for the vesting of liabilities. Under that para. all liabilities in respect of financial obligations of the Dominion Government arising out of the governance of a merged State shall be liabilities of the absorbing Province, unless the obligation is relatable to central purposes. Under item 65(b) in the Union List in the Seventh Schedule to the Constitution of India Union agencies and institutions for the promotion of special studies or research is a subject allotted to the Union, The object of the Indian Council of Agricultural Research is to aid, develop and co-ordinate agricultural and veterinary research in India by promoting scientific research, instruction and experiments in the science, art, methods and practice of agriculture etc. The Council would therefore fall within the ambit of item 65'b) referred to above. Since the liability to pay part of contribution is relatable to the Union subject it would be for the Union Government to meet that liability. (cf. R.L.A.'s opinion No. 6908 dated 22-5-50).

P.M. Lad.
14-9

Remembrancer of Legal Affairs.

U.R. to A. & F.D. No. 13184 , dated the 18th September 1950.

Office of the R.L.A.

Whether a sale of land effected by the Maharaja of Lunavda six days before merger can be set aside.

It is a general principle that grants made by a previous Ruler would not be binding on the succeeding State unless they have been ratified by it. In the present case the land was sold by the ex-Maharaja of Lunawada to oneShri Jaswantsinh Mathusinh Thakor for Rs. 101/- on 23rd April 1948, and a Sanad was granted to the Vendee in respect of it on 4th June 1948, that is, six days before the integration of the State with the province of Bombay. It is true that the sale was made for an inadequate consideration and possibly in anticipation of the merger of the States; but it cannot be disputed that the Ruler of ~~Mandx~~ Lunavada had full power to dispose of the land for any consideration even though it be inadequate. That sale was challenged before the Chief Administrator after integration of the State requesting him to cancel the grant, but the Chief Administrator declined. Even the Provincial Government was approached twice but the Government declined to interfere. In view of these facts it would be possible to infer that the Government ratified the grant made by the ex-Ruler of Lunawada. Consequently it would not be justifiable for Government to interfere with the grant at this stage particularly when the grantee appears to have spent about Rs. 1200/- on the land. It may be that the brothers of the grantee who have been agitating against the grant have a moral claim to the land since it originally belonged to their family and was forfeited by the Ruler of Lunawada; but that forfeiture was about 60 years ago with the result that the original owners of the land could have no legal title to it. Consequently, it appears that it would be inadvisable to interfere with the grant at this stage.

The course suggested by the Secretary, Revenue Department, appears to be proper.

P.M.Lad
3/10

Remembrancer of Legal Affairs.

U.R. to R.D., No. 13962 , dated the 4th October 1950.

S .C. 18/6

Office of the R.L.A.

It is true that the Baroda Marriage and Divorce Registration Act, 1979 (Samvat) has neither been repealed specifically under section section 4(2) nor continued under section 5 of the Bombay Merged States Laws Act, 1950, but under section 4(1) all laws in force in the merged area corresponding to laws extended to it under section 3 have been repealed, "To correspond" does not usually or properly mean to be identical with, to harmonise with or to be suitable to (per Lord Cornvis in Sackville-West v. Holmesdale (Viscount) (1870) , L.R. 4 H.L. 543 at pp. 575-576). Although no law has been extended to the Baroda merged area which is exactly similar to the Baroda Marriage and Divorce Registration Act, 1979(Samvat) still certain laws which contain provisions similar to those contained in the Baroda Marriage and Divorce Registration Act have been extended to this area. These are ;

(1) The Births, Deaths and Marriages Registration Act, 1886.

(2) The Special Marriage Act, 1872.

(3) The Native Converts' Marriage Dissolution Act, 1866.

(4) The Indian Divorce Act. 1869.

(5) The Indian Christian Marriage Act, 1872.

(6) The Parsi Marriage and Divorce Act, 1936.

(7) The Dissolution of Muslim Marriage Act, 1939.

(8) The Bombay District Municipal Act, 1901, and

(9) The Bombay Municipal Boroughs Act,

which contain provisions for making bye-laws for the registration of marriages. It is therefore clear that to avoid a conflict between these Acts and the Baroda Marriage and Divorce Registration Act, the latter has not been continued in force in the Baroda merged area. That Act should therefore be considered as no longer in force in that area.

P.M.Lad

Remembrancer of Legal Affairs.

S.C. 8/6 U.R. to L.S.G. & P.H.D.No. 15502 dated the 4th November 1950.

Office of the R.L.A.

Liability of widows to pay debts.

From xx the facts stated by the Administrator, it can be gathered that the income of the villages and utilised towards the repayment of the loan advanced by the State. After the death of the Thakore, the villages were resumed by the Baria State and the widows and the mother of the Thakore have been given maintenance allowance. In the maintenance order, there is no mention of the recovery of the loan. The order is silent in that matter. It might be the intention of the Rulers of Baria not to recover the debts. The Revenue Department holds the view that the question of the resumption of the villages and of the recovery of the loan should be dealth with seperately. But in the circumstances mentioned above, both these questions appear to be in terdependent and if the order of resumption of the villages is not to be disturbed distributed, it would be proper to hold that the loan also should be deemed to have been adjusted.

P.M.lad
Remembrancer of Legal Affairs.

U.R. to P* & S.D. No. 15300, dated the 2nd November 1950.

S.C. 8/6

Office of the R.L.A.

Liability of Government to pay Thakarani's debts.

If the Thakarani had only a life interest in the two villages, on resumption after her death, the villages would be free from debts, even if there was a charge thereof on them. Consequently Government would not be liable to pay the balance of the debt to the creditor of Thakarani.

P.M., ad
3/10

Remembrancer of Legal Affairs.

U.R. to P & S.D. No. 15233 dated the 1st November 1950.

S.C. 8/6

Office of the R.L.A.

Merger of States Whether Government can keep with them the will of the Rana of Wav.

There appears no objection to Government keeping the will of the Rana of Wav. Under Articles 3 and 5 of the Mw Merger Agreement the Rana is entitled to the full ownership, use and enjoyment of all property which has been recognised by Government to be his private property In respect of the private property the will will be binding on the successor provided it is otherwise in conformity with the personal law or usage applying to such property. However, having regard to the relations between the Rana and his son, it would not seem expedient for the Chief Secretary to accept the deposit of the will. The Rana may be advised to deposit it for safe custody with his Bank which he can always d under the ordinary law.

P.M.Lad
7-12

Remembrancer of Legal Affairs.

U.R. to P. & S.D. No. 878-Coufl. dated the 4th December 1950.

S.C. 8/6

Office of the R.L.A.

Whether alienations made by the Maharaja of Dharampur can be set aside.

The Remembrancer of Legal Affairs concurs in the legal position as explained in the opening part of the Government of India's letter dated 15th September 1950. However, in so far as the properties were not the private properties of the Rules, paragraph 3 of the letter collateral to the agreement will have no application. The only question for consideration is whether even as grants of State properties they are protected under paragraphs 5 and 7 of that collateral letter. The grants contemplated by paragraph 5 are not grants only to servants as such; and would include grants by the Ruler in recognition of services or otherwise. If paragraph 7 is to be strictly construed there would be no scope for interference, since all the grants were made prior to the 1st of April 1948. Although therefore, it is apparent that these grants were made in a sense on the eve of the merger and may be without regard to the interests of the State, it would not be legally feasible to cancel them at this stage.

P.M. Lad
13-11

Remembrancer of Legal Affairs.

U.R. to P. & S.D.No. 15850 dated the 14th November 1950.

S.C. 8/6

Office of theR.L.A.

In on States application of Laws) Order, 1948, Telephone licence in Bombay.

It is true that by the Indian States (Application of Laws)Order, 1948, the provisions of the Indian Telegraph Ag 1885, were extended to and brought into force in the Bombay State and the licence granted to Messrs. Meeyaji and Co. by the Dewan on 22nd June 1933 can be said to have been continued in force. But the condition that the State shall take at least 25 telephone connections did not form part of the licence; and the fact that the assurance was given before the grant of the licence is not material . The Dewan' letter dated the 3rd April 1933 is, as stated by the Chief Secretary, in the form of a separate agreement which it is open to the successor Government to respect or repudiate.

P.K.Lad
28-11
Remembrancer of Legal Affiars.

U.R. to P. & S.D' No. 16771 , dated the 28th November 1950.

S.C. 8/6

Office of the R.L.A.

The whole ques ion has been exhaustively discussed in R.L.A.'s opinion No. 10419, dated the 25th July 1950, and the R.L.A. adheres to the position taken therein. What the Government of India consider a convenient and practical way of dealing with the proceedings omits to take note of the fundamental difficulty, namely, that the Courts are not in existence. The authorities cited in the Government of India's letter concern cases where the old Courts continued to exist. The real difficulty in the present case is that since the Court, namely, the High Court or the District Court, has ceased to exist, whether the successor Courts in Bombay State can continue the proceedings although they may now relate exclusively to the territory which has been assigned to Rajasthan and which comes under the jurisdiction of different successor courts of the same status as the successor Courts in Bombay State. There is no question of affecting the vested right of the parties to continue the proceedings. The real question is before what Tribunal should those proceedings be continued. That is a genuine difficulty which cannot be got rid of without legislation. That difficulty was resolved in the analogous case of Hyderabad enclaves by a legislative provision. This may be brought to the notice of the Government of India once again, and if they still persist in their view, theonly course left open would be to invite the Bombay High Court to decide the question of jurisdiction if and when it arises before them in a particular proceeding. which will mean unnecessary trouble to the parties concerned.

P.M.Lad
29-12

Remembrancer of Legal Affair -

Sdl-
1816.

U.K. to H.D.No. 18482 dated the 30-12-1950.

S.